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Filing date: **06/26/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045655
Party	Plaintiff National Center For Fathering, Inc. National Center For Fathering, Inc. National Center For Fathering, Inc. National Center For Fathering, Inc. National Center For Fathering, Inc. 10200 West 75th Street, Suite 267 Shawnee, KS 66204 UNITED STATES
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Submission	Motion to Compel Discovery
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Signature	/Clinton G. Newton/
Date	06/26/2007
Attachments	Motion to Compel.pdf (5 pages)(34136 bytes) Declaration.pdf (1 page)(16636 bytes)

In re Registration of Father's Day/Mother's Day Council Inc.

Registration No.: 2,440,274

Issued: April 3, 2001

Mark: FATHER-OF-THE-YEAR

NATIONAL CENTER FOR FATHERING, INC.,

Petitioner,

v.

FATHER'S DAY/MOTHER'S DAY COUNCIL INC.,

Registrant.

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Cancellation No.:
92045655

**PETITIONER'S MOTION TO COMPEL RESPONSES
TO REQUESTS FOR DISCOVERY AND TO EXTEND TRIAL DATES**

Petitioner, National Center for Fathering, Inc. ("Petitioner"), moves pursuant to TBMP §§ 523.01 to compel Registrant, Father's Day/Mother's Day Council, Inc. ("Registrant"), to provide responses to Petitioner's Interrogatories and Requests for Production of Documents. Registrant has not responded to Petitioner's Interrogatories and Requests for Production of Documents. Further, in light of delays caused by Registrant's failure to respond to discovery, Petitioner moves for a resetting of the trial dates, beginning with the resetting of the close of Petitioner's testimony period to at least 60 days after Registrant is compelled to respond.

I. PETITIONER IS ENTITLED TO AN ORDER COMPELLING REGISTRANT TO RESPOND TO PETITIONER'S DISCOVERY REQUESTS

Pursuant to TBMP §§ 523.02 Petitioner's counsel certifies that it has made a good faith effort, through correspondence and oral communication, to resolve the issues presented in this Motion. Those efforts have been unsuccessful. In support of its Motion, Petitioner states as follows:

1. On April 3, 2006 Petitioner filed a petition to cancel Registrant's trademark to the term "Father of the Year."

2. On September 7, 2006 a Motion to Suspend was granted so the parties could work out an agreement. These efforts were unsuccessful.

3. On March 15, 2007 Registrant served its first and only discovery requests on Petitioner (including Interrogatories and Requests for Production).

4. On April 6, 2007 Petitioner served its first and only discovery requests on Registrant (including Interrogatories, Requests for Production, and Requests for Admissions).

5. On April 19, 2007 Petitioner sent a timely Response to Registrant's discovery requests. Petitioner's Response was complete, with the exception of withholding production of some confidential documents and privileged documents. Several thousand pages of response documents were produced. The confidential documents are being withheld pending Registrant's agreement to enter into a proposed Protective Order, which has also been provided to Registrant. Once such an agreement is reached, Petitioner will produce the remaining non-privileged documents responsive to Registrant's discovery requests.

6. On May 11, 2007, Responses to Petitioner's First Request for Production, First Set of Interrogatories, and First Requests for Admission were due.

7. To date, the Registrant has not responded to Petitioner's Interrogatories, Requests for Admission, or Requests for Production of Documents. The Petitioner has twice corresponded with Registrant inquiring about Registrant's response. Once through a letter dated May 21, 2007 and once in a telephone conversation on May 29, 2007, with Registrant's counsel of record, Mr. Donald L. Kreindler. During the telephone conversation, Registrant's counsel, Mr. Kreindler, suggested that a Motion to Compel would be required to secure Registrant's responses to the

requested discovery.¹ Some settlement discussions have occurred sporadically. However, no settlement appears imminent. Further, Petitioner requires Registrant's responses to ascertain a fair settlement position and to proceed with the entry of evidence in its testimony period.

Petitioner respectfully requests that the Board issue an order compelling Registrant to answer Petitioner's Interrogatories and respond to Petitioner's Request for Production.

II. PETITIONER IS ENTITLED TO AN EXTENTION OF THE TRIAL DATES

Rule 6(b) of the Federal Rules of Civil Procedure states, in relevant part "[w]hen by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order. . . ." In addition, § 509.01 of the TBMP states "[i]f the motion is filed prior to the expiration of the period as originally set or previously extended, the motion is a motion to extend, and the moving party need only show good cause for the requested extension."

The thirty-day testimony period for a party in position of plaintiff is set to close on July 5, 2007 in this cancellation proceeding. Therefore, this Motion has been filed prior to the expiration of the testimony period. Registrant's failure to respond, in any manner, to Petitioner's discovery requests provides good cause for an extension of the testimony period. Due to the Registrant's failure to respond to the discovery requests, Petitioner has been unable to adequately prepare for the testimony period. Petitioner requests that the close of Petitioner's testimony period be extended 60 days from the date the Registrant is ordered to answer Petitioner's

¹ More specifically, Mr. Kreindler indicated that Petitioner's undersigned counsel could "go ahead and file a Motion to Compel", that the Board would simply set a date by which Registrant would need to comply and that they would comply by that date.

Interrogatories and respond to Petitioner's Request for Production and that all other trial dates be reset accordingly.

CONCLUSION

For at least the foregoing reasons Petitioner requests that the Board grant the present Motion and compel Registrant to answer Petitioner's Interrogatories and respond to Petitioner's Request for Production. Additionally, Petitioner request the Board grant the present Motion and extend the trials dates such that the thirty-day testimony period for party in position of plaintiff will close 60 days from the date Registrant is compelled to respond to Petitioner's discovery requests and the subsequent trial dates are reset accordingly.

NATIONAL CENTER FOR FATHERING,
PETITIONER

Date: 7/26/2007

By: /Clinton G. Newton/

Clinton G. Newton Reg. No. 42,930
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ATTORNEY'S FOR PETITIONER

CERTIFICATE OF SERVICE

I, Clinton G. Newton, do hereby certify that I have, on this 26th day of June, 2007, mailed by first class United States Mail, postage prepaid, the foregoing **Petitioner's Motion To Compel Responses To Requests For Discovery And Extend Trial Dates** to the following:

Donald L. Kreindler
John F Wilk
Phillips Nizer LLP
666 Fifth Avenue, 28th Floor
New York, NY 10103

Attorneys for Father's Day/Mother's Day
Council, Inc.

/Clinton G. Newton/
Clinton G. Newton

ATTORNEY'S FOR PETITIONER

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**DECLARATION OF CLINTON G. NEWTON
IN SUPPORT OF PETITIONER'S MOTION TO COMPEL**

I, Clinton G. Newton, hereby declare, as follows:

1. I am a partner of the law firm of Shook, Hardy & Bacon LLP, counsel for Petitioner, The National Center for Fathering, Inc. ("Petitioner"), in the above-captioned action. I make this Declaration in support of Petitioner's above referenced Motion. I have personal knowledge of the facts set forth therein.

2. Attached hereto is a copy of the above referenced Motion. I hereby declare that all statements made therein are of my own knowledge, are true, and that all statements made on information and belief are believed to be true; and further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Date: 7/26/2007

By: /Clinton G. Newton/

Clinton G. Newton Reg. No. 42,930